land the oil was being taken.[22] It cannot be argued here that since each devisee is precluded from drilling for oil himself by the terms of the lease he should share in the royalties, for the consideration given to the testator in return for a right with reference to the whole tract was a right with reference only to certain parts of the land — those from which oil was being taken. For a person to benefit one part of his estate at the expense of another is no new thing in the law.

Although the reasoning in *Campbell* v. *Lynch* does not correspond to the true nature of these royalties, the result reached by the court is sound. The decree partitioning the land had no effect whatever on the royalties or the right to receive them. At the time of the partition neither the profit nor the right to royalties was in existence, but each was contingent on the discovery of oil as a condition precedent. There was nothing there to partition but the land. When the right to royalties did vest on the production of oil by the lessee, it was held by the heirs in common, and each was entitled to a partition thereof. It is submitted, however, that if oil were being produced at the time of the partition, the partition of the land with no mention of the royalties would have made the division of the latter among the heirs *res judicata*. It is such questions as these which make it important, in the simpler cases where the correct result is obvious, to define carefully the terms dealt with.

WHAT CONSTITUTES THE PRACTICE OF LAW. — Several courts in well-considered opinions have concluded that a corporation cannot engage in the practice of law.[1] The practically universal requirement of a license, granted only upon proof of satisfactory character and learning, makes it impossible for a corporation, as such, to become a member of the legal profession.[2] Nor will the courts permit a corporation indirectly to practise law through the medium of employees who are licensed attorneys.[3] A lawyer owes complete devotion to his client's interests. To allow him at the same time to serve another master — the corpora-

[22] But see, *contra*, Wettengel *v.* Gormley, 160 Pa. 559, 28 Atl. 934, reconsidered and affirmed in 184 Pa. 364, 39 Atl. 57. That case, however, can hardly be supported. In the first hearing of the case the court held that the devisees should share in the royalties in proportion to the land held by them, on the ground that the oil lease, because of the vagrant nature of the oil, was like a lease for general tillage, rather than like the right to take solid minerals from the land. In the reconsideration, the court held that the lease created a term for years in the lessee, that the royalty, being rent, was personalty and went intestate under the will which devised the land and did not mention the lease, and that it went to the children of the testator, who were the devisees, in proportion to the amount of land devised to each. If that is the law of the distribution of property after death in Pennsylvania, it is peculiar to that state.

[1] Matter of Coöperative Law Co., 198 N. Y. 479, 92 N. E. 15; Matter of City of New York, 144 App. Div. 107, 128 N. Y. Supp. 999. See also Commonwealth *v.* Alba Dentist Co., 13 Pa. Dist. R. 432; State Electro-Medical Institute *v.* State, 74 Neb. 40, 103 N. W. 1078.

[2] See Matter of Coöperative Law Co., 198 N. Y. 479, 483, 92 N. E. 15, 16.

Similarly, since a corporation cannot qualify as a practitioner, it cannot practise dentistry or medicine. Hannon *v.* Siegel-Cooper Co., 167 N. Y. 244, 60 N. E. 597; Commonwealth *v.* Alba Dentist Co., 13 Pa. Dist. R. 432; State Electro-Medical Institute *v.* State, 74 Neb. 40, 103 N. W. 1078.

[3] "The relation of attorney and client is that of master and servant in a limited

tion whose employee he is — is destructive of the fundamental fiduciary relationship of attorney and client. For this reason in some states corporations have been expressly forbidden by statute to practise law either directly or indirectly.[4]

In spite of these legal restrictions, however, title insurance companies, trust companies, collection agencies, and other corporations continue to invade fields of activity only recently occupied by the lawyer. The obvious advantages of corporate organization — the opportunity for service over wide areas through branch offices, and the more efficient specialization resulting from a large volume of business — account for this tendency here, as in other branches of economic life. The courts are thus being brought face to face with the task of marking off those activities of the lawyer in which corporations can engage from those in which they cannot. How far may the corporate organization enter without encroaching upon the principle that a corporation cannot engage in the practice of law?

Clearly only those activities of the lawyer which are peculiar to his function in the legal and economic structure are meant to be included in "the practice of law" as here used. The customary business of the average lawyer of the past generation or more furnishes no safe guide in the matter. The ancient function of the advocate, arguing the cause of his master or client before a court of justice, is undoubtedly "practising law" in this narrower sense.[5] Similarly, the preparation of briefs for submission to a court or the commencing of a legal action, is practising law.[6] Rendering advice to a client as to his legal rights and duties is likewise clearly within the peculiar province of the legal profession.[7] But beyond the prosecution of causes in the courts and the rendering of legal advice the question is not so clear. It has been held that an unlicensed person may recover on a contract for services in securing a reduction of a tax claim, on the ground that since no appearance before any court was involved, it did not constitute "practising law."[8] And where proceedings were taken by one not an attorney before a state legislature to secure a pardon for another, it was held that he was not engaging in the practice of law.[9] On the other hand,

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and dignified sense, and it involves the highest trust and confidence. It cannot . . . exist between an attorney employed by a corporation to practise law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. There would be neither contract nor privity between him and the client, and he would not owe the duty of counsel to the actual litigant." Matter of Coöperative Law Co., 198 N. Y. 479, 483, 92 N. E. 15, 16.

[4] N. Y. PENAL LAW (CONSOL. LAWS, c. 40), § 280. See People *v.* Title Guaranty & Trust Co., 168 N. Y. Supp. 278; People *v.* People's Trust Co., 167 N. Y. Supp. 767.

[5] Kaplan *v.* Berman, 37 Misc. (N. Y.) 502, 75 N. Y. Supp. 1002; Cobb *v.* Judge of Superior Court, 43 Mich. 289, 5 N. W. 309; Weir *v.* Slocum, 3 How. (N. Y.) 397. See Ellis *v.* Bingham County, 7 Idaho, 86, 60 Pac. 79.

[6] Hitson *v.* Browne, 3 Colo. 304; McKoan *v.* Devries, 3 Barb. (N. Y.) 196; Bank *v.* Risley, 6 Hill (N. Y.), 375; *In re* Bailey, 146 Pac. 1101 (Mont.); Abercrombie *v.* Jordan, 8 Q. B. D. 187; *In re* Simmons, 15 Q. B. D. 348.

[7] People *v.* Erbaugh, 42 Colo. 480, 94 Pac. 349.

[8] Dunlap *v.* Lebus, 112 Ky. 237, 65 S. W. 441. See also Hall *v.* Sawyer, 47 Barb. (N. Y.) 166.

[9] Bird *v.* Breedlove, 24 Ga. 623. See also State *v.* Bryan, 98 N. C. 644, 4 S. E. 522.

a corporation or other unlicensed person cannot engage in the business of organizing corporations, involving the furnishing of advice and information, and preparing the necessary papers of incorporation.[10] Nor, according to some courts, can a corporation carry on a general collection business, at least if the corporation also undertakes to institute litigation on claims when necessary.[11] And one court has declared that contracting for compensation to secure the release of a prisoner from a chain-gang is engaging in the practice of law.[12]

Where the question has arisen in regard to the preparation of legal instruments the pronounced tendency of the courts has been to include that entire business within the peculiar province of the lawyer. Thus the recent New York case, *People* v. *People's Trust Co.*, held that a trust company which provided attorneys *gratis* for persons wishing to draw a will was illegally engaging in the practice of law.[13] In another case the same court held that a corporation cannot draw a bill of sale or chattel mortgage for a client or customer.[14] And the decisions and *dicta* of other courts have been to the same effect.[15]

The soundness of this doctrine, *in toto*, is not altogether apparent. It cannot, of course, be denied that in the case of many legal documents the advice and guidance of the lawyer is highly essential. But the intelligent preparation of such papers as an ordinary bill of sale or a chattel mortgage generally does not require a vast amount of legal learning. Moreover, the entrance of the lawyer into this field of business is comparatively recent.[16] Until the nineteenth century the drawing of commercial instruments, such as ordinary commercial contracts and chattel mortgages, was left to the money-lender and the scrivener.[17] And with the advance toward greater simplicity in such instruments the need of the lawyer's supervision should constantly diminish. Little is to be gained, therefore, by excluding the corporation and unlicensed individual from this sort of business.

The tendency of the courts to keep the corporation out of the present activities of the lawyer, wherever possible, is not entirely commendable. The broad field which the lawyer has entered is only a temporary phenomenon. It includes much that is not essentially legal and that can be done more efficiently and economically outside the profession. The title-insurance companies and the incorporated collection agencies, with their branch offices throughout the country, are certainly

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[10] *In re* Pace, 170 App. Div. 818, 156 N. Y. Supp. 641; Hall *v.* Bishop, 3 Daly (N. Y.) 109.

[11] *In re* Associated Lawyers Co., 134 App. Div. 350, 119 N. Y. Supp. 77; Buxton *v.* Lietz, 136 N. Y. Supp. 829, aff'd 139 N. Y. Supp. 46. See also People *v.* Schreiber, 250 Ill. 345, 95 N. E. 189.

[12] *In re* Duncan, 83 S. C. 186, 65 S. E. 210. But here the question arose in regard to one who had been disbarred, and hence the courts would tend to give "the practice of law" a wider interpretation.

[13] 167 N. Y. Supp. 767 (App. Div.).

[14] People *v.* Title Guaranty & Trust Co., 168 N. Y. Supp. 278 (App. Div.).

[15] Eley *v.* Miller, 7 Ind. App. 529, 535, 34 N. E. 836, 837; Savings Bank *v.* Ward, 100 U. S. 195, 199.

[16] See CHRISTIAN, HISTORY OF SOLICITORS, 1, 39, 90.

[17] ROGER NORTH'S AUTOBIOGRAPHY, 41. In France today much of the drawing of legal documents is done by *notaires* rather than by attorneys or advocates. "The Bench and the Bar in France," 11 AM. L. REV. 672, 680.

desirable institutions. And the courts should avoid placing limitations on corporations and laymen which unnecessarily hamper the freedom of the individual and the efficient development of the economic life of the community.

DOCTRINE OF UNCLEAN HANDS AS APPLIED TO THE PROTECTION OF TRADE NAMES. — "He who comes into equity must come with clean hands." A good illustration of how far this maxim is carried appears in *Howard* v. *Lovett*,[1] a recent Michigan case, where the defendant appropriated the name of the plaintiff's vaudeville act, which purported to be an exhibition of thought transference, and an injunction was refused on the ground that the act constituted a fraud on the public.

Though taken literally this maxim might be construed as covering any wrongdoing by the plaintiff, it is fundamental that it applies only where the misconduct is in connection with the particular subject which the plaintiff seeks to have litigated.[2] Even when thus qualified, numerous exceptions to the maxim have arisen. For instance, where a conveyance is made in trust by plaintiff to defendant for an illegal purpose, if it is shown that, though the plaintiff's action was illegal, it was instigated by the defendant for the express purpose of defrauding the plaintiff, — that is, where the parties are not *in pari delicto* — recovery has been allowed.[3] Likewise, where the illegal purpose has been abandoned by the plaintiff, a *locus penitentiae* is permitted.[4]

The question has frequently arisen in connection with the protection of a trade-mark where the plaintiff has been guilty of false representations to the public in connection with it. It has sometimes been held that where the misrepresentation does not appear in the trade name or label itself, but only in independent advertising, the fraud on the public is purely collateral, and will be no bar to an injunction.[5] Other cases, however, have required that the good will sought to be protected must not be built up on the misrepresentations. The latter seems a better test as to whether the fraud is collateral.[6] In many jurisdictions where the owner of the trade name has made fraudulent representations in connection therewith, no equitable relief will be given.[7] Where the plaintiff has been guilty of some fraudulent practice in his business, not particularly connected with the trade name, the fraud is clearly collateral, and relief will be given against infringement.[8]

In *Howard* v. *Lovett* the chief question seems to be as to what is necessary to create a fraud on the public. Closely analogous to these cases are cases at law as to what constitutes a fraudulent representation

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[1] 165 N. W. 634.
[2] 1 POMEROY, EQUITY JURISPRUDENCE (2 ed.), § 399.
[3] 1 *Ibid.*, § 403; WOODWARD, QUASI-CONTRACTS, § 138.
[4] Carll *v.* Emery, 148 Mass. 32, 18 N. E. 574.
[5] Wormser *v.* Shayne, 111 Ill. App. 556; Curtis *v.* Bryan, 36 How. Pr. (N. Y.) 33; Ford *v.* Foster, L. R. 7 Ch. 611, (1872).
[6] Johnson & Johnson *v.* Seabury & Johnson, 71 N. J. Eq. 750, 67 Atl. 36.
[7] Kahler Manufacturing Co. *v.* Beechore, 59 Fed. 572; Hillson Co. *v.* Foster, 80 Fed. 896; Seabury *v.* Grosvenor, Fed. Cas. No. 12576.
[8] Heller & M. Co. *v.* Shaner, 102 Fed. 882.